

DEPOSITION OF ROLAND LEROY WATERS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DAVID DAVIS,

Plaintiff,

vs.

CASE NO. 3:06-CV-0054-VPM

CITY OF PHENIX CITY, ALABAMA,

et al.,

Defendants.

 **COPY**

* * * * *

DEPOSITION OF ROLAND LEROY WATERS, taken
pursuant to stipulation and agreement before Shannon
M. Williams, Certified Court Reporter and
Commissioner for the State of Alabama at Large, in
the offices of City Hall, 601 12th Street, Phenix
City, Alabama, on Wednesday, April 4, 2007,
commencing at approximately 1:47 p.m. EST.

* * * * *

APPEARANCES

FOR THE PLAINTIFF:

THOMAS A. WOODLEY
Woodley & McGillivary
1125 15th Street N.W.
Suite 400
Washington, D.C. 20005

FOR THE DEFENDANTS:

JAMES P. GRAHAM, JR.
712 13th Street
P.O. Box 3380
Phenix City, Alabama 36868-3380

JAMES R. MCKOON, JR.
McKoon & Thomas
925 Broad Street
P.O. Box 3220
Phenix City, Alabama 36868-3220

ALSO PRESENT:

David Davis
H.H. Roberts
Wallace Hunter

1 STIPULATIONS

2 It is hereby stipulated and agreed by and
3 between counsel representing the parties that the
4 deposition of ROLAND LEROY WATERS is taken pursuant
5 to the Federal Rules of Civil Procedure and that
6 said deposition may be taken before Shannon M.
7 Williams, Certified Court Reporter and Commissioner
8 for the State of Alabama at Large, without the
9 formality of a commission; that objections to
10 questions other than objections as to the form of
11 the questions need not be made at this time but may
12 be reserved for a ruling at such time as the
13 deposition may be offered in evidence or used for
14 any other purpose as provided for by the Federal
15 Rules of Civil Procedure.

16 It is further stipulated and agreed by and
17 between counsel representing the parties in this
18 case that said deposition may be introduced at the
19 trial of this case or used in any manner by either
20 party hereto provided for by the Federal Rules of
21 Civil Procedure.

22 * * * * *

1 ROLAND LEROY WATERS

2 The witness, having first been duly sworn
3 or affirmed to speak the truth, the whole truth and
4 nothing but the truth, testified as follows:

5 THE REPORTER: Usual stipulations?

6 MR. GRAHAM: We do want to read and sign.

7 EXAMINATION

8 BY MR. WOODLEY:

9 Q. Mr. Waters, could you state your full name
10 for the Record?

11 A. Roland Leroy Waters.

12 Q. Mr. Waters, my name is Tom Woodley. I'm
13 one of the attorneys representing the plaintiff,
14 David Davis, in this federal court action brought
15 against the city and yourself and others. If at any
16 time you don't hear or understand one of my
17 questions in your deposition, stop me right away.
18 I'll be more than happy to repeat or rephrase the
19 question. Do you understand that?

20 A. Yes, sir.

21 Q. Have you ever had your deposition taken
22 before in another case?

23 A. One time.

24 Q. What was the nature of that suit, if you
25 remember?

1 A. A lawsuit involving the Columbus EMS
2 against the City of Columbus concerning an FLSA
3 issue.

4 Q. Okay. Have you had an opportunity to spend
5 at least some time with the city attorneys
6 concerning the nature of this lawsuit?

7 A. We met Monday for a few minutes, but that
8 was it.

9 Q. Okay. And did they explain to you the
10 nature of the procedures we'll be following in the
11 deposition so you're comfortable about what we're
12 going to do this afternoon?

13 A. Yes, sir.

14 Q. And like you were asked before we went on
15 the record, you'll have to give me verbal responses
16 so there can be an adequate record made of what we
17 discuss. Do you understand that?

18 A. Yes.

19 Q. And then, lastly, this reporter will have
20 an opportunity to put your testimony and what is
21 said today in a transcript form and you'll have a
22 chance to review and sign that. Do you understand
23 that?

24 A. Yes, sir.

25 Q. And, of course, most importantly, you've

1 been sworn under oath now so you're obligated under
2 the potential penalty of perjury to tell the truth.
3 Do you understand that?

4 A. Yes, sir.

5 Q. Are you currently employed?

6 A. No, sir.

7 Q. Are you retired?

8 A. Yes, sir.

9 Q. And from what job did you retire?

10 A. Columbus Fire Emergency Medical Services.

11 Q. And how long did you work for the city's
12 fire department?

13 A. Thirty-two years and eight months, I
14 believe -- or ten months.

15 Q. Do you remember the year when you started
16 here?

17 A. I started in my other job -- here in Phenix
18 City or my other job?

19 Q. Yes, here.

20 A. December 2005. December 19, 2005, to be
21 exact.

22 Q. Okay. So -- I'm sorry -- maybe I didn't
23 understand your earlier response. You started
24 working here in the city fire department in 2005?

25 A. Yes, sir.

1 Q. Okay. And you were a chief, in a chief
2 position?

3 A. Deputy Chief here.

4 Q. And what was the previous fire department?

5 A. Columbus, Georgia Fire and Emergency
6 Medical Services.

7 Q. Right across the river?

8 A. Yes, sir.

9 Q. And when you were in the Columbus Fire
10 Department, did you work yourself up the rank
11 structure?

12 A. Yes, sir.

13 Q. What was the highest position you held when
14 you left the Columbus Fire Department?

15 A. Chief of the department.

16 Q. And when did you retire from the Phenix
17 City Fire Department?

18 A. February 2nd of this year.

19 Q. Okay. And you're not doing anything now in
20 terms of employment?

21 A. No, sir.

22 Q. When you were Deputy Chief here in the
23 Phenix City Fire Department, what were your basic
24 duties and responsibilities?

25 A. Managing the Operations Division of the

1 department.

2 Q. Mr. Waters, we have in front of you a
3 binder containing various papers and exhibits, and
4 we've got them tabbed with numbers on the right-hand
5 side to expedite the deposition. The attorneys
6 representing you and the city have a full set of
7 those exhibits as well. When I invite you to review
8 those documents, if you want to take as long as you
9 would like to review those to yourself before I ask
10 questions, feel free to do so.

11 Let me invite, first of all, your attention to
12 Exhibit 7, which appears to be a city job
13 description of the job that you held, which was
14 Deputy Fire Chief of Operations. Are you familiar
15 with this job description at all?

16 A. Yes, sir.

17 Q. And as far as you know, it is basically
18 correct as to what your duties and responsibilities
19 were?

20 A. Yes, sir.

21 Q. And, in part, your duties as Deputy Fire
22 Chief would be including supervising the fire
23 suppression personnel that were under your command?

24 A. Yes, sir.

25 Q. Did you periodically assess the job

1 performance and evaluate the job performance of the
2 firefighters under your level?

3 A. Officially, no. Unofficially, yes. The
4 only people I evaluated would be my direct reports.

5 Q. What do you mean by that, your direct
6 reports?

7 A. The assistant chiefs -- or the battalion
8 chiefs as they're now called.

9 Q. When David Davis was employed as a sergeant
10 in the Phenix City Fire Department, was he under
11 your supervision and management?

12 A. Indirect, yes, sir.

13 Q. And indirect meaning that there were some
14 positions between --

15 A. In the chain of command, yes, sir.

16 Q. What is the organizational structure and
17 chain of command within the city's fire department,
18 starting with Fire Chief?

19 A. Fire Chief, Deputy Chief, battalion chiefs,
20 now captain, sergeant, firefighter.

21 Q. Is there a position called Assistant Fire
22 Chief?

23 A. No longer, unless they changed it after I
24 left. It was changed to Battalion Chief.

25 Q. And when you were a Deputy Chief for the

1 Phenix City Fire Department, were you obligated to
2 become familiar with the general guidelines and
3 standard operating procedures and rules and
4 regulations of the fire department?

5 A. Yes, sir.

6 Q. Would that include also the city's Merit
7 System rules and regulations?

8 A. Yes, sir.

9 Q. Based upon your extensive experience in the
10 fire service, including your capacity as Deputy
11 Chief here in the city fire department, would you
12 consider the recruitment and retention of
13 firefighters to be an important issue in any fire
14 department and also important to public safety?

15 A. Yes, sir.

16 Q. Would you consider adequate staffing to be
17 an important issue to the operation of a fire
18 department and to public safety?

19 A. Yes, sir.

20 Q. Would you consider employee morale within a
21 fire department to be an important issue concerning
22 effective operations of the fire department and also
23 public safety?

24 A. Yes, sir.

25 Q. Would you consider adequate protective gear

1 and fire department equipment to be an important
2 issue involving effective operations of the fire
3 department and involving public safety?

4 A. Yes, sir.

5 Q. Would you consider adequate financial
6 resources that might be available to a fire
7 department to be an important issue concerning fire
8 department operations and also public safety?

9 A. Yes, sir.

10 Q. Would you consider adequate response times
11 and adequate dispatching procedures in a fire
12 department to be an important issue of effective
13 fire department operations and also public safety?

14 A. Yes, sir.

15 Q. Would you consider training, adequate
16 training of firefighters in the fire department, to
17 be an important issue that affects effective
18 operations of the fire department and also public
19 safety?

20 A. Yes, sir.

21 Q. Returning to your position as Deputy Fire
22 Chief, did you have the authority in that position
23 to hire and fire employees in the fire department?

24 A. No, sir.

25 Q. What's your understanding as to who had

1 that authority?

2 A. My understanding, as long as I have been in
3 the fire service, only the department director has
4 to authority to hire, fire, promote, or demote.

5 Q. So that would be the fire chief here in the
6 city of Phenix City?

7 A. Yes, sir.

8 Q. Did you have any authority over any
9 disciplinary action when you were Deputy Chief?

10 A. Yes, sir.

11 Q. What was the nature or range of your
12 authority to discipline?

13 A. Well, of course, I could administer
14 discipline according to the Merit System. But if it
15 was something I did not myself implement or
16 initiate, then it would come up through the chain of
17 command to me, and from me to the chief for me to
18 review.

19 Q. Okay. Do you know what role, if any, the
20 city manager would play if a firefighter is going to
21 be discharged from his position?

22 A. My understanding, it has to have the city
23 manager's approval.

24 Q. Is it your understanding that the city
25 manager is the ultimate decisionmaking authority --

1 A. Yes, sir.

2 Q. -- with regard to firing a firefighter?

3 A. Yes, sir.

4 Q. At some point in time, sir, did you become
5 aware that the firefighters employed by the Phenix
6 City Fire Department had formed a labor
7 organization?

8 A. Yes, sir.

9 Q. And how did that come to your attention?

10 A. Shortly after I started work, David Davis
11 was assigned to Station One and said he wanted to
12 meet with me. He went through the chain of command
13 and wanted to let me know he was president of the
14 firefighters association, he hoped we could get
15 along and have a harmonious working relationship.
16 The meeting was short. And I assured him that I
17 would work with anybody I could; as long as
18 everybody understood their job, we would have no
19 problems.

20 Q. Do you remember approximately what period
21 of time this was when Mr. Davis informed you that he
22 was the president of the firefighters local labor
23 association?

24 A. It was shortly after I started to work. It
25 was probably around January, I would imagine.

1 Q. What year?

2 A. 2006.

3 Q. Okay. Did you know that Mr. Davis was also
4 previously a vice-president of the firefighters
5 local union?

6 A. Yes, sir.

7 Q. Let me invite your attention to an exhibit
8 in our binder. It's Exhibit 18, and this appears to
9 be a memorandum from yourself, Mr. Waters, when you
10 were Deputy Chief of the city fire department,
11 addressed to Chief Wallace Hunter dated February 6,
12 2006, and regarding, quote, letter to Mr. H.H.
13 Roberts, end quote. You see where it says that?

14 A. Yes, sir.

15 Q. And did you prepare this memo and give it
16 to Chief Hunter?

17 A. Yes, I did.

18 Q. And is this your own language that you
19 typed up?

20 A. Yes, it was.

21 Q. Nobody prepared this for you?

22 A. Absolutely not.

23 Q. And prior to giving this memo to Chief
24 Hunter, were you instructed to meet with Mr. Davis
25 concerning a letter that apparently had been sent by

1 a Mr. Schaitberger to the city manager?

2 A. No, sir. I was not instructed. In fact, I
3 asked Chief Hunter if it would be all right if I did
4 meet with him, because the letter was not addressed
5 to me. But I asked the chief if I could have his
6 approval to meet with David to see if we could find
7 out what was going on. But I was not instructed to
8 meet with David.

9 Q. So this was your idea, to meet with David
10 about the letter?

11 A. Yes, sir, it was.

12 Q. And what caused you to reach that
13 conclusion and make that request to Chief Hunter?

14 A. Because I thought I had a relationship with
15 David, as I did with everybody else in the
16 department, where I could sit down and talk and find
17 out what was going on; if there was something I
18 needed to be aware of or if there's other
19 circumstances.

20 Q. When you had this conversation and made the
21 request to Chief Hunter, had you seen the letter
22 that was sent by Mr. Schaitberger of the IAFF to
23 City Manager Roberts?

24 A. I believe I had. What exhibit is that?

25 Q. That would be Exhibit 17. Why don't you go

1 ahead and take a look at that. And, for the record,
2 this is the letter from the general president of the
3 International Association of Firefighters.

4 A. Right. Yes, sir, I did.

5 Q. And it's dated January 31, 2006, addressed
6 to the city manager. So your testimony is that you,
7 in fact, saw a copy of this?

8 A. Yes, sir, I did.

9 Q. And when you read a copy of this letter, is
10 that what prompted you to go to Chief Hunter and
11 request a chance to discuss this subject with
12 Mr. Davis?

13 A. No, sir. It was a letter, I believe, that
14 Mr. Malone, if I'm not mistaken, had sent through
15 the city manager -- or Mr. Malone had called or
16 something. And I, at that time, told the chief, I
17 said, I don't believe that, you know, David is aware
18 of any of this going on, so I would like to have
19 your permission to talk to him. It was really about
20 a conversation, I believe, with a Mr. Malone that
21 prompted me to ask the Chief if I could talk to
22 David.

23 Q. We may be talking about two different
24 things here. Let me go back to Exhibit 18, again
25 your memo to Chief Hunter of February 6, 2006. And

1 you see in the second sentence it says, quote, the
2 purpose of the meeting was to discuss the letter
3 Mr. Roberts received from Mr. Schaitberger.

4 A. Yes.

5 Q. So just focusing on that, and so your
6 testimony is clear, is this -- the meeting that you
7 had with Mr. Davis for the purpose of discussing the
8 Schaitberger letter?

9 A. Yes, sir.

10 Q. Okay. And was this your own idea, that you
11 had suggested this to Chief Hunter that you meet
12 with David?

13 A. Yes, sir.

14 Q. You'll see at the end of your memo to Chief
15 Hunter at the bottom it says, quote, as I have
16 communicated to you on several -- I believe that
17 should be occasions. It says obsessions, but did
18 you mean occasions?

19 A. Typographical error.

20 Q. Then it continues, David Davis is doing an
21 outstanding job for me and has a very positive and
22 professional attitude, end quote. Do you see where
23 it says that?

24 A. Yes, sir.

25 Q. Did you honestly and truthfully believe

1 that when you communicated that to Chief Hunter?

2 A. Yes, sir.

3 Q. And when you say he was doing an
4 outstanding job, I assume that was in his role as
5 firefighter for the fire department?

6 A. Sergeant, yes, sir.

7 Q. Sergeant?

8 A. Yes, sir.

9 Q. And could you elaborate or detail that, as
10 to why you were indicating that David Davis was
11 doing an outstanding job as a sergeant?

12 A. Could you repeat the question again?

13 Q. Yes. Could you explain in detail that
14 which caused you to indicate here in this memo to
15 Chief Hunter that David Davis was doing an
16 outstanding job?

17 A. I was just reaffirming the fact that I had
18 had a conversation with Chief Hunter about numerous
19 people in the department that were doing an
20 outstanding job, and David -- I never had a problem
21 with his job performance, and I put that in the
22 memo.

23 Q. And, evidently, you had communicated that
24 assessment of his job performance on several
25 occasions to the Chief?

1 A. Yes, sir. I did.

2 Q. Can you recall any specific examples where
3 he did an absolute outstanding job on a fire run or
4 rescue service call or --

5 A. No, sir, not on a fire. Primarily, the
6 things I was making mention to had to do with
7 assignments that I would give out to people in the
8 department. And it was probably new to a lot of the
9 people, the way I was doing things. And they were
10 required to take topics and research them and then
11 make Power Point presentations. And everything I
12 assigned was done, and it was done on time, and a
13 lot of work went into it. And, you know, as far as
14 job performance and whatever else, I mean, I -- I
15 was getting along with everybody, and I thought the
16 Chief needed to hear that because I was a newcomer,
17 so to speak, to the department.

18 Q. Did you have any specific concerns or
19 anything that troubled you concerning David Davis's
20 job performance?

21 A. Not until the end.

22 Q. And what was the end? What do you mean?

23 A. Well, when the swap time was -- when the
24 Chief had sat down and thought about implementing
25 the swap time again -- or trade time or whatever you

1 want to call it -- I had had the opportunity to meet
2 with all the people in the department, because he
3 would come out and had met with everybody in the
4 shift meetings.

5 And I asked everybody, I said, look, this is a
6 major deal for the department. And I said, I'll
7 tell you as I have told you as soon as I walked in
8 the door; when the Chief of the Department, when the
9 city manager, mayor, council walks into the fire
10 station, you stand up, you greet them, you know, you
11 act interested, you stay focused, and be as
12 professional and polite as you possibly can. Of
13 course, this was a major deal for the Department to
14 get the time reinstated.

15 And at that particular meeting, David's
16 attitude was very negative. He wouldn't even look
17 at the chief. He stared off. And I met with his
18 supervisor after the meeting. They said they
19 noticed it, too. And said his comment was that
20 something along the lines that the Chief was doing
21 his job, so he didn't have to show anything other
22 than what he was.

23 Q. When, approximately, did this meeting
24 occur?

25 A. Sir, I'll be honest with you. I don't

1 know. Whenever the swap time was reinstated. I'm
2 sure the Chief would probably know. March, first
3 part of April, something around there.

4 Q. 2006?

5 A. Yes, sir.

6 CHIEF HUNTER: I think it was --

7 MR. MCKOON: Let him answer to his
8 recollection.

9 Q. So this concern about this meeting and swap
10 time would have been after your memo of February 6,
11 2006?

12 A. Yes, sir.

13 Q. Now, you indicate at the bottom of this
14 memo that David Davis had a very positive and
15 professional attitude. Can you think of any
16 specific examples that would support that assessment
17 of Davis?

18 A. Specific examples, no, sir, other than the
19 fact that the contact that I had with David was --
20 he was always professional. He was very
21 respectful. I never had any problems. Did what I
22 asked. And that's exactly what was communicated in
23 the memo.

24 Q. Take a look at Exhibit 14. This is a
25 newspaper article that came out, I believe, in

1 September 2005 from the Columbus Ledger-Enquirer.
2 And it deals with various issues and personnel that
3 were employed at the time in the Phenix City Fire
4 Department. Have you read this newspaper article
5 before today?

6 A. Yes, sir.

7 Q. And did you read it on or about the time
8 that it came out in this newspaper?

9 A. Yes, sir.

10 Q. After you read this article, were there any
11 meetings or discussions within the Fire Department
12 about the substance of the article?

13 A. I was not employed with the Fire Department
14 then.

15 Q. Okay. So you were still at the Columbus
16 Fire Department?

17 A. Yes, sir.

18 Q. Okay. Did you ever get a call from Chief
19 Hunter?

20 A. About this article right here, no, sir.

21 Q. Did you call him up and say, can I help you
22 out?

23 A. No.

24 Q. Okay. Have you ever had occasion to
25 address the city council about issues affecting the

1 Phenix City Fire Department?

2 A. No, sir.

3 Q. Have you ever had discussions with any
4 council members about issues affecting the Phenix
5 City Fire Department?

6 A. No, sir.

7 Q. Have you ever had any discussions or
8 conversations with the mayor of Phenix City
9 concerning its fire department?

10 A. No, sir.

11 Q. At some point in time, Mr. Waters, did it
12 come to your attention, in perhaps the first few
13 months of the year, 2006, when you were the Deputy
14 Chief, that there was consideration being given to
15 extending the probationary period for new hires in
16 the fire department from one year to 18 months?

17 A. Yes, sir.

18 Q. Did you play a role in those discussions or
19 the determination that that might be a good policy
20 change?

21 A. Did I play a role -- the Chief and I talked
22 about it. And we had meetings about it in the fire
23 department and talked about it, just letting
24 everybody know the purpose of it, which is a good
25 thing. In fact, it's like an insurance policy for a